

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the above amendments and following remarks.

**Status of Claims**

Claims 1-12, 14-27, 29 and 30 are currently pending in the application, of which claims 1, 15, 29 and 30 are independent. Claims 1-12, 14-27, 29 and 30 were rejected.

In the amendments above, independent claim 1 has been amended. Support for the amendments in claim 1 may be found in the specification as originally filed, at least in paragraph [0031], line 6, paragraph [0084], lines 6-7 and claim 15, line 1. No new subject matter has been introduced by the above amendments. Entry thereof is therefore respectfully requested.

**Summary of the Office Action**

Claims 1-12, 14-27, 29 and 30 were rejected under 35 U.S.C. §101, as not falling within one of the four statutory categories of invention.

Claims 1, 2, 15, 16, 29, and 30 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Brelin (US Patent No. 6,647,448).

Claims 3-12, 14, 17-26 and 28 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brelin in view of Shahabuddin et al. (US Patent No. 6,877,035, hereinafter “Shahabuddin”).

The rejections are respectfully traversed for reasons set forth below.

**Claim Rejection Under 35 U.S.C. §101**

Claims 1-12, 14-27, 29 and 30 were rejected under 35 U.S.C. §101, as not falling within one of the four statutory categories of invention.

In response, independent claim 1 has been amended to recite that a processor performs the steps in the claim. A processor is a tangible element, statutory under 35 U.S.C. §101. Therefore, independent claim 1 and its dependent claims 2-12 and 14 are now statutory under 35 U.S.C. §101.

The rejection of claims 15-27, 29 and 30 under 35 U.S.C. §101 is respectfully traversed because independent claims 15, 29 and 30 are not method claims. Rather, independent claim 15 is an apparatus claim with a processor and a memory for performing the functions recited in the claim. Independent claim 29 is a computer program product having a processor for performing the functions recited in the claim. Similarly, independent claim 30 is an apparatus claim with means for performing the functions recited in the claim. As such, claims 15-27, 29 and 30 are statutory under 35 U.S.C. §101.

In view of the foregoing, withdrawal of the rejection of claims 1-12, 14-27, 29 and 30 under 35 U.S.C. §101 is respectfully requested.

**Claim Rejection Under 35 U.S.C. §102**

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal

Circuit in *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 221

USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

- **Claims 1, 2, 15, 16, 29 and 30:**

Claims 1, 2, 15, 16, 29, and 30 were rejected under 35 U.S.C. §102(e) as being anticipated by Brelin. The rejection is respectfully traversed for at least the following reasons.

- **Independent Claim 1:**

Independent claim 1 recites:

... acquiring an entitlement profile associated with the application to determine if the application is entitled to requested resources over a time period;  
identifying an entitlement value and corresponding sliding window of the time period from the entitlement profile;  
determining if the request for resources exceeds the entitlement value associated with the sliding window ...

Brelin fails to teach at least the claimed features recited above. Brelin discloses a method and system for scheduling resources over a network (See *Brelin*, col. 1, lines 8-9). In Brelin, the system includes a posting device (41 in Fig. 4) for generating and submitting a resource request to a target device (43 in Fig. 4), i.e., a resource device, wherein the resource request includes a requested time with a start time, duration time and an interval time (See

step 91 in Fig. 9; col. 9, lines 44-49). The resource device 43 determines whether a subunit (45 in Fig. 4) therein is available during the requested time (See step 93 in Fig. 9; col. 9, lines 49-54). If a subunit 45 is not available, the resource device 43 sends a message to the posting device 41 to indicate that the requested resource is not available at the requested time (See step 115 in Fig. 9; col. 10, lines 17-23). However, if a subunit 45 is available, the resource device 43 posts the request in a schedule entry (44 in Fig. 4) and monitors to ensure that the request is honored and completed (See steps 95, 97, 99, 101 and 103 in Fig. 9; col. 9, line 54 to col. 10, line 16).

With such a method and system, the resource device 43 in Brelin fails to acquire any entitlement profile associated with the posting device 41. Moreover, in Brelin, the resource device 43 fails to determine if the posting device 41 is entitled to the resources requested. Thus, Brelin fails to teach “acquiring an entitlement profile associated with the application to determine if the application is entitled to requested resources over a time period,” as recited in independent claim 1.

In the rejection of claim 1, the Office Action asserts that the claimed feature of “acquiring an entitlement profile associated with the application” is disclosed in col. 6, lines 20-25 of Brelin. Such an assertion is respectfully traversed. The passage in col. 6, lines 20-25 merely discloses that the posting device 41 generates and submits resource request entries to the resource device 43, and the resource device 43 uses the received resource request entries to build a resource schedule. Thus, the passage in col. 6, lines 20-25 fails to teach that the system determines if an application is entitled to requested resources, as proposed by the Office Action.

In addition, Brelin also fails to identify an entitlement value and corresponding sliding window of the time period from the entitlement profile, as recited in claim 1. As discussed above, the resource device 43 in Brelin does not acquire an entitlement profile of the posting device 41 and does not determine if the posting device 41 is entitled to the requested resources. As a result, there is no entitlement value in Brelin to identify. In the rejection of claim 1, the Office Action asserts that the “identifying” step in claim 1 is disclosed in Fig. 9, unit 90. However, this assertion is respectfully traversed. The unit 90 in Fig. 9 is a flow diagram for managing a resource request from the posting device 41. There is no step in Fig. 9 that identifies any entitlement value, as proposed by the Office Action. As a result, Brelin fails to teach “identifying an entitlement value and corresponding sliding window of the time period from the entitlement profile,” as recited in claim 1.

Furthermore, the system in Brelin fails to teach “determining whether the request for resources exceeds an entitlement value,” as recited in claim 1. As discussed above, the resource device 43 in Brelin determines whether a subunit therein is available for the requested time and, if so, the resource device 43 monitors the request until it is honored and completed. As such, the system of Brelin monitors the request without making any determination regarding whether the resource request exceeds an entitlement value, as recited in claim 1.

In the rejection of claim 1, the Office Action asserts the feature of “determining if the request for resources exceeds the entitlement value” is disclosed in col. 10, lines 5-10 and 36-50 in Brelin (See Office Action, page 3). However, this assertion is respectfully traversed. In Brelin, the passage in col. 10, lines 5-10 discloses steps to ensure that the request for resources is honored and completed by the resource device 43. Additionally, the passage in

col. 10, lines 36-50 discloses that the posting device 41 can override a conflicting schedule entry. As such, neither the passage in col. 10, lines 5-10 nor the passage in col. 10, lines 36-50 teaches anything related to determining if the resource request exceeds an entitlement value, as recited in independent claim 1.

For at least the foregoing reasons, Brelin fails to teach each and every feature of independent claim 1 and thus cannot anticipate claim 1. It is therefore respectfully requested that the rejection of claim 1 be withdrawn, and claim 1 be allowed.

- Independent Claims 15, 29 and 30:

Independent claims 15, 29 and 30 recite features similar to those recited above with respect to claim 1. Therefore, claims 15, 29 and 30 are believed to be allowable over Brelin for at least the same reasons as set forth above. Withdrawal of the rejection of claims 15, 29 and 30 and allowance of these claims are thus respectfully requested.

- Dependent Claims 2 and 16:

Claims 2 and 16 are dependent from independent claims 1 and 15. Thus, they are also believed to be allowable over the cited documents of record for at least the same reasons as set forth to independent claims 1 and 15 above. It is therefore respectfully requested that the rejection of claims 2 and 16 be withdrawn, and these dependent claims be allowed.

#### Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007):

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of

ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 3-12, 14, 17-26 and 28:**

Claims 3-12, 14, 17-26 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Brelin in view of Shahabuddin. This rejection is respectfully traversed for at least the following reasons.

Claims 3-12, 14, 17-26 and 28 are dependent from independent claims 1 and 15. As discussed above, Brelin fails to disclose all of the features of independent claims 1 and 15. In setting forth the rejection of claims 3-12, 14, 17-26 and 28, the Office Action has not and cannot reasonably assert that the disclosure contained in Shahabuddin makes up for any of the deficiencies discussed above with respect to the proposed combination. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to modify Brelin with the disclosure contained in Shahabuddin, the proposed modification would still fail to yield all of the features of independent claims 1 and 15.

For at least the foregoing reasons, the Office Action has failed to establish that claims 3-12, 14, 17-26 and 28 are *prima facie* obvious in view of the combined disclosures contained in Brelin in view of Shahabuddin, as proposed in the Office Action. The Examiner is therefore respectfully requested to withdraw the rejection of claims 3-12, 14, 17-26 and 28 and to allow these claims.

**PATENT**

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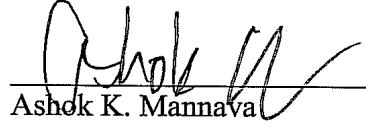
**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: July 16, 2009

By

  
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Ashok K. Mannaava  
Registration No. 45,301  
(703) 652-3822

MANNAVA & KANG, P.C.  
11240 Waples Mill Road  
Suite 300  
Fairfax, VA 22030  
(703) 865-5150 (facsimile)